

**COUNTY OF SACRAMENTO
CALIFORNIA**

For the Agenda of:
June 14, 2022
11:00 a.m.

To: Board of Supervisors

Through: Ann Edwards, County Executive
Bruce Wagstaff, Deputy County Executive, Social Services

From: Emily Halcon, Director of the Office of Homeless Initiatives
Leticia Ramirez, Deputy County Counsel

Subject: Discuss and Provide Input on the Proposed Ordinance
Prohibiting Camping and Encampments on Certain Public
Property Locations and Provide Input on The County of
Sacramento's Encampment Response Policy

District(s): All

RECOMMENDED ACTIONS

1. Discuss Framework For A Proposed Ordinance Prohibiting Camping and Encampments on Certain Public Property Locations and Provide Input Regarding Same
2. Provide Input on The County's Encampment Response Policy

BACKGROUND

The County of Sacramento (County) provides critical services and supports to those experiencing homelessness throughout the County, including access to behavioral health services and cash and non-cash benefits and provides support to outreach and engagement teams within all the cities in the County. In the unincorporated parts of the County, the County plays an additional role not only in service connections, but in outreach and engagement in encampments and management of public spaces where camps are located.

The Board of Supervisors (Board) for the County has directed staff to implement a multi-faceted approach to responding to unsheltered homelessness in the unincorporated County that prioritizes connecting unsheltered individuals with shelter, housing, and services.

On February 15, 2022, the Board adopted Resolution No. 2022-0153 declaring that a Shelter Crisis pursuant to Government Code section 8698.2 exists in the County based on a finding that a significant number of persons within the

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unincorporated County are without the ability to obtain shelter, and that the situation has resulted in a threat to the health and safety of those persons. The declaration authorized the County to adopt appendices to the California Building Code that allow use of non-traditional facilities as emergency shelter and also provided additional flexibility to County staff in procurement of services to more quickly secure sites, build facilities, and select operators.

On April 26, 2022, the Board discussed and considered approving the first of these non-traditional emergency shelter facilities, called "Safe Stay Communities." The proposed Safe Stay Community located at 8144 Florin Road, at the corner of Power Inn Road, was approved by the Board on June 8, 2022 and will consist of 100 Pallet Shelters (75 single occupancy and 25 double occupancy), on-site shower and restroom facilities, and on-site offices for program staff who will provide a variety of client-centered supportive services aimed at helping people permanently exit homelessness.

As the County's efforts to provide more housing and shelter for persons experiencing homelessness continue to gain traction, the continued presence of homeless encampments and related nuisance activities in the unincorporated County areas pose a significant risk of harm to the public health, safety, and welfare of individuals residing in those encampments and the greater community, as well as significant damage to public infrastructure and interference with the County's operations and maintenance activities.

To that end, staff has been asked by the Board to develop a proposed ordinance, that would make it unlawful to camp and/or maintain an encampment or store personal property on public property in and around four priority locations (critical infrastructure, locations providing temporary shelter to the homeless [such as a Safe Stay Community], and, during inclement weather, wildfire risk areas and flood risk areas). Violations of the ordinance would be subject to criminal penalties (infraction or misdemeanor if previously cited for violating the ordinance within 30 calendar days). The intent of the ordinance is to provide an additional tool to law enforcement to utilize in situations in which individuals refuse to voluntarily comply with requests to leave an area when alternative appropriate shelter options are made available to them and have been rejected following concerted outreach efforts by professional homeless outreach and engagement staff.

Staff has also been requested to provide input on current mechanisms to manage camping that is not in one of these four areas such as the American River Parkway and to describe the unique conditions pertinent to people living in vehicles along County roads, and on County-owned property. As part of the

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workshop, staff will discuss current County code sections pertinent to management of encampments on public property, and potential changes if a new ordinance were adopted.

This item also requests Board input on the County's revised Encampment Response Policy, including the criteria used to determine and prioritize the County's response to homeless encampments on public property in the unincorporated County such as proximity to sensitive uses and size of the encampment. The Policy has been revised to be consistent with the proposed Ordinance and reflect current practices.

DISCUSSION

I. Proposed Ordinance

The proposed ordinance would add Chapter 9.120 to the Sacramento County Code to prohibit camping and encampments in the following priority areas: critical infrastructure, locations providing year-round overnight shelter to people experiencing homelessness, and wildfire and flood risk areas during inclement weather. The intent of this proposed ordinance is to provide the County with an enforcement tool to address activities related to individuals camping or establishing encampments on public property that result in negative impacts and/or damage to community resources, public infrastructure and/or areas deemed highly susceptible to fires and/or flooding. While existing County ordinances address obstructions on the sidewalk, pedestrian pathways, and public right-of-way (SCC 12.12.035) and keeping or storing rubbish or debris on the public right-of-way (SCC 16. 18.401), the County Code does not specifically address camping and encampments on public property. If adopted, the proposed ordinance would provide law enforcement officials with an ordinance that specifically addresses the activities defined above in these particular locations because of public health, safety, and welfare concerns. For example, camping and the presence of encampments in or near critical infrastructure is problematic because of the potential or actual damage to infrastructure that may disrupt the provision of vital services to the general public and the interference with staff operations and maintenance activities. In addition, prohibiting camping or encampments near locations providing shelter to the homeless will reduce the occurrence of nuisance activity immediately surrounding these sites which furthers the County's intent to have shelters be a refuge and positive addition to a neighborhood.

However, the ability to enforce the proposed ordinance, like the existing Code provisions, is dependent on law enforcement capacity and prioritization, and

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the availability of alternative shelter options for persons experiencing homelessness who are camping on public property due to legal constraints created by *Martin v. City of Boise*, (2019) 920 F.3d 584 (*Boise*).

Current efforts by the County to clear or move encampments on public property generally rely on the individuals voluntarily complying with requests from the Sheriff's Department or other staff to move, or the issuance of no trespass notices that if violated can result in a misdemeanor citation under Penal Code section 602. Voluntary compliance will likely be the most common approach when dealing with individuals camping or maintaining an encampment on public property who are experiencing homelessness in the absence of alternative shelter or space for them to be.

The proposed ordinance is modeled after ordinances adopted by other public agencies including the City of Sacramento and Placer County with some differences to address the County's specific needs. If adopted, the ordinance would only apply to the unincorporated County area.

The following are key provisions of the ordinance:

- Defines "critical infrastructure" as levees or real property or a facility, publicly owned, leased, or operated, that is confirmed by a resolution of the Board as being so vital or integral to the operation or functioning of the County that its damage, incapacity, disruption, or destruction would have a debilitating impact on the public health, safety or welfare
- Prohibits camping, occupying camp facilities, or using camp paraphernalia on public property at the following locations:
 - Critical infrastructure;
 - Within 25 feet of critical infrastructure;
 - Within 25 feet of a vehicular or pedestrian entrance or exit of critical infrastructure;
 - Within 25 feet or within the distance stated on posted signage (up to a maximum of 1,000 feet), whichever distance is greater, of a County administered location providing year-round overnight shelter to people experiencing homelessness;
 - Within 25 feet or within the distance stated on posted signage (up to a maximum of 1,000 feet), whichever distance is greater, of a vehicular or pedestrian entrance or exit of a County administered location providing year round overnight shelter to people experiencing homelessness; or
 - Wildfire risk area or flood risk area during inclement weather.
- Prohibits maintaining an encampment or storing personal property on public property in the locations listed above.

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- Defines "inclement weather" as a severe weather alert or severe weather emergency as defined in the County's Emergency Operations Plan or a Fire Weather Watch issued by the National Weather Service.
- Defines "Flood risk area" means local flood hazard or special flood area as defined in the County's Floodplain Management Ordinance, Ordinance No. SZC 2016-0023, as may be amended from time to time.
- Defines "Wildfire risk area" means land that is covered with grass, grain, brush, forest, whether privately or publicly owned, which is so situated or is of such inaccessible location that a fire originating upon it would present an abnormally difficult job of suppression or would result in great or unusual damage through fire or such areas designated by the Fire Marshal.
- Violations would first be subject to warnings and an infraction. Any individual found in violation of the ordinance within 30 calendar days of being issued an infraction would be cited for a misdemeanor.

Because violations of the proposed ordinance would be subject to criminal penalties, the County's ability to enforce the ordinance and issue criminal citations to homeless individuals camping or maintaining an encampment on public property would be contingent upon the availability of alternative shelter in accordance with federal case law established by *Boise*.

In *Boise*, the Court held that "the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter." As more emergency housing and shelter is made available to individuals experiencing homelessness, the better able the County is to respond to camping and encampments on public property, including the use of criminal citations for those who refuse offers of shelter. Thus, the increased availability of emergency housing and shelter, including options that can accommodate vehicles used as shelter, is key to the County's ability to criminally enforce ordinances and statutes prohibiting individuals from unlawfully being on public property because alternative shelter is available to them in accordance with *Boise*.

Furthermore, the proposed ordinance is narrowly focused on prohibiting camping and maintaining an encampment in particular locations and in the case of wildfire and flood risk areas during specific times of inclement weather. These limitations are based on the County Counsel's Office advice that it is more legally defensible to prohibit this activity in select areas than a blanket prohibition on all public property given the Court's language in *Boise* indicating

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that it may be constitutionally permissible to criminally enforce an ordinance prohibiting individuals from being on public property in specific areas.

Staff seeks the Board's input the proposed ordinance to help the County Counsel in drafting specific ordinance language and in particular, requests feedback on the following items:

- Priority Locations
 - o The proposed ordinance identifies four locations in which camping or encampments are specifically prohibited. Should the Board seek to only prohibit this activity in one or two areas, law enforcement resources could be more focused and targeted in order to maximize limited resources.
- Size of the buffer zones
 - o As indicated above, the more narrowly focused and specific the restriction on camping or maintaining an encampment is the more legally defensible. Staff requests that the Board provide input on the size of the buffer zones around critical infrastructure and locations providing shelter based on reasonable public health, safety, and welfare concerns.
- Enforcement
 - o The proposed ordinance states that a violation of the ordinance would be subject to an infraction (citation subject to a fine) and an individual found to be in violation of the ordinance within 30 calendar days of receiving an infraction may be subject to a misdemeanor citation.

Pending the input from the Board on these and other items, staff will return to the Board with a draft ordinance in the next two months to introduce for a formal vote of the Board.

II. Proposed Encampment Response Policy

In June 2019, staff drafted and administratively implemented a policy regarding homeless encampments that guides the County's response to encampments (Policy) and identifies the safety, health and location criteria used to determine the County's response and intervention (e.g. containing or managing; closing if there's an imminent risk of harm; or coordinating with impacted jurisdictions). This Policy is included as Attachment 1 and includes updates since the initial drafting to reflect current resources available for response and to align with changing practices since initial drafting.

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The Policy outlines a comprehensive and strategic approach to responding to homeless encampments in the unincorporated County area that balances legal and resource constraints. The Encampment Response Coordinator, working out of the Office of Homeless Initiatives regularly convenes various departments and divisions such as the County Executive's Office, Office of Homeless Initiatives, the Department of Human Assistance (DHA), and the Sheriff's Homeless Outreach Team (HOT) to assess encampments and coordinate available resources to respond to encampments and connect people living unsheltered to critical services. The Encampment Response Coordinator receives notification of encampments from the public, the Board members, Departmental staff and other governmental partners, and tracks the size and conditions of the encampments, impacts on surrounding community, and efforts to connect people with services.

The criteria used to evaluate and determine the County's response to an encampment fall within three categories: safety, location, health, and perceived vulnerabilities of occupants. Various factors that are weighted in priority are contained within each category and include items such as objective hazards to occupants of an encampment (e.g. proximity to vehicle traffic) and damage to public infrastructure or damage to environmentally critical areas, such as rivers and waterways.

Service Provision in Encampments

The Policy requires that the County coordinates outreach to offer the occupants of an encampment services or housing or shelter opportunities. The County has two primary tools to support these needs, shown in the exemplary flow chart included as Attachment 2.

1. Encampment Services Team: As part of the FY 21/22 budget, the Board approved funding to develop a multi-disciplinary Encampment Services Team (EST) to improve connections to shelter, housing and other critical services in encampments that are high priorities based on size, longevity, and/or vulnerability of the occupants. The EST consists of social workers from DHA, contracted housing navigators, clinical behavioral health staff from the Department of Health Services (DHS) and peer navigators from DHS. The EST engages in designated camps to assess the needs and offer services including temporary sheltering. The EST is 'case carrying' in that they are oriented to remain in an encampment for as long as it takes to address identified needs of those living in the encampment.

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2. Response Oriented Services: As the EST is limited in the number of camps they can engage in at any point in time, in addition to the EST, the County separately deploys DHA and DHS staff on an as-needed basis to other camps to address immediate needs of occupants, including referrals to deeper services and shelter referrals. These connections are often in collaboration with or in advance of a Sheriff Homeless Outreach Team (HOT) engagement of a camp that is in violation of existing County code related to access to public right-of-way.

Removal of Encampments and Storage of Property

Efforts to contain (i.e. clean-up or move) or close any encampment are conducted in accordance with state, federal, and local legal requirements including the County's 2009 settlement in *Lehr et al. v. City of Sacramento et al.* (*Lehr*). Under the settlement agreement, the County agreed to follow specific requirements and protocols regarding the removal and storage of unattended personal property identified during encampment clean ups. These requirements include the posting of notices to vacate at least 48 hours prior to the cleaning or removal of an encampment and storing any abandoned personal property for at least 90 days.

The Policy has been revised to be consistent with the proposed ordinance and reflect current capacity and operational practices. Staff is requesting Board input and approval of Policy to guide staff's efforts to respond to encampments as more alternative shelter is made available to persons experiencing homelessness. In particular, Board input regarding the criteria and the prioritization of how limited staff and County resources should be deployed to respond to encampments.

FINANCIAL ANALYSIS

The recommendations have no financial impacts as the item is a Board informational item on a proposed ordinance to address encampments in public spaces. Should the Board direct staff to bring the ordinance back for a formal vote of the Board, staff will provide an analysis of the financial impacts of the ordinance.

Attachments:

ATT 1 –County of Sacramento's Encampment Response Policy, Revised May 2022

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ATT 2 – Flowchart of County's Approach to Encampment Response